

21 C.J.S. Courts § 229

Corpus Juris Secundum | May 2023 Update

Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

5. Nature of Prior Decisions

§ 229. Advisory opinions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  89

Answers by justices to questions propounded by other departments of the government are not stare decisis.

When justices, pursuant to constitutional provisions, answer questions propounded to them by other departments of the government, the answers are not an adjudication but merely advisory and not within the doctrine of stare decisis.¹ The advisory opinion is merely the opinion of the individual justices signing it and is not issued by the court acting in its judicial capacity.² However, although an advisory opinion is not precedent, a court will generally not revisit it.³

An advisory opinion is appropriate only if there is a pending matter and the opinion of law would assist in performing a present duty.⁴ When addressing a request from the governor or legislature for an advisory opinion, the state supreme court in some jurisdictions must determine whether each question presents a solemn occasion that confers on the court the constitutional authority to answer the questions propounded.⁵ A "solemn occasion" arises when a branch of government, having some action in view, has serious doubts as to its power and authority to take such action, under the constitution, or under existing statutes,⁶ and the question propounded must concern a matter of live gravity and unusual exigency, which means that the body asking the question requires judicial guidance in the discharge of its obligations.⁷

CUMULATIVE SUPPLEMENT

Cases:

American Bar Association (ABA) ethics opinions do not bind federal courts or the District of Columbia courts. [Plummer v. McSweeney](#), 941 F.3d 341 (8th Cir. 2019).

Justice of the Supreme Judicial Court would decline to answer question from House of Representatives regarding whether Indian tribe could conduct gambling on tribal trust land without permission to do so from state, where House did not, upon Court's request for briefing of issue, provide any response that asked Court to determine existence of solemn occasion that would justify Court's consideration of question. [Me. Const. art. 6, § 3. Opinion of the Justices](#), 2018 ME 154, 196 A.3d 1291 (Me. 2018).

[END OF SUPPLEMENT]

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 Del.—[Opinion of the Justices](#), 413 A.2d 1245 (Del. 1980).

N.H.—[Opinion of the Justices](#), 167 N.H. 539, 115 A.3d 257 (2015) (questions regarding the facial constitutionality of pending legislation).

Me.—[In re Opinion of the Justices](#), 2002 ME 169, 815 A.2d 791 (Me. 2002).

Mass.—[Opinion of the Justices to the Senate](#), 373 Mass. 883, 366 N.E.2d 733 (1977).

Actions by individual members of governor's council
An action performed by individual councilors of the Governor's Council that is not entered into the official record, even one subscribed to by a majority of the councilors, is not sufficient to trigger a state supreme court's constitutional authority and responsibility to render advisory opinions.

Mass.—[In re Answer of Justices to Council](#), 461 Mass. 1201, 962 N.E.2d 166 (2012).
- 2 Ala.—[McInnish v. Riley](#), 925 So. 2d 174, 208 Ed. Law Rep. 657 (Ala. 2005).

Del.—[Opinion of the Justices](#), 840 A.2d 637 (Del. 2003).
- 3 Fla.—[Barley v. South Florida Water Management Dist.](#), 823 So. 2d 73 (Fla. 2002).
- 4 Mass.—[In re Opinion of the Justices to the Governor](#), 461 Mass. 1205, 964 N.E.2d 941 (2012).
- 5 Me.—[Opinion of Justices](#), 2015 ME 107, 123 A.3d 494 (Me. 2015).
- 6 Mass.—[In re Opinion of the Justices to the Governor](#), 461 Mass. 1205, 964 N.E.2d 941 (2012).
- 7 Me.—[Opinion of the Justices](#), 2012 ME 49, 40 A.3d 930 (Me. 2012).